IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5058

Summary Calendar

IN THE MATTER OF: FLORIDA WEST GATEWAY, INC., d/b/a Florida West Air, A Subsidiary of Schillileagh Air, Inc., A Louisiana Corporation, Debtor.

KENNETH MICHAEL WRIGHT,

Appellant,

versus

FIRST UNION NATIONAL BANK OF FLORIDA, OMEGA AIR BARRANTAGY HOUSE and GREENWICH AIR SERVICES,

Appellees.

Appeal from the United States District Court for the Western District of Louisiana
(92-1225)

(May 20, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Kenneth Michael Wright appeals from the district court's imposition of Rule 11 sanctions against him in the amount of $2,641.84. We find that the district court did not abuse its discretion in imposing this sanction, but that it apparently

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, we have determined that this opinion should not be published.

committed a $100 mathematical error when tallying its assessments of reasonable attorney's fees and expenses. Accordingly, we affirm but remand with instructions to correct this error.

I.

On May 7, 1990, Florida West Gateway, Inc. (Florida West) filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 1100 et seq., in the United States Bankruptcy Court for the Western District of Louisiana. On June 15, 1992, during a two and one-half hour evidentiary hearing, the bankruptcy court heard motions by creditors of Florida West--First Union National Bank of Florida, Greenwich Air Services, and Omega Air Barrantagy House--to transfer the venue of Florida West's Chapter 11 case to the United States Bankruptcy Court for the Southern District of Florida (the Southern District). The court granted the creditors' motions on June 22, 1992.

The following day, Kenneth Michael Wright, counsel for Florida West, filed a notice of appeal from the bankruptcy court's transfer order with the federal district court. On the evening of June 30, 1992, Wright telecopied an unsigned, undated copy of a pleading titled Emergency Motion for Stay of Order Pending Appeal, and Memorandum in Support of Motion for State of Order Pending Appeal (the Emergency Motion) to the creditors' Florida counsel; the creditors' local Louisiana attorneys were never provided with a copy of this motion.[1] The Emergency Motion

[1] See infra note 3 and accompanying text.

states that another motion to stay the transfer order pending appeal had been filed with the bankruptcy court in Louisiana on June 25, 1992, thereby satisfying the requirement under Rule 8005 of the Federal Rules of Bankruptcy Procedure that such motions be presented "to the bankruptcy judge in the first instance."[2] According to the Emergency Motion, the final disposition of this original motion to stay was unknown due to the unavailability of the bankruptcy judge and his law clerks.

Wright filed the Emergency Motion in the United States District Court for the Western District of Louisiana on July 1, 1992. The same day, the district court granted that motion and stayed the transfer order pending appeal. Because they received no notice of the filing of the Emergency Motion and no notice of the hearing on that motion, the creditors had no opportunity to respond before the district court granted the stay. After receiving confirmation that Florida West's Emergency Motion had been granted, the creditors sought to have the stay vacated pursuant to Rule 60(b) of the Federal Rules of Civil Procedure on the ground of surprise. The creditors stressed that (1) they were never served with the original motion to obtain a stay of transfer, which Florida West alleges it filed, (2) they did not receive the Emergency Motion until the evening before it was

[2] Rule 8005 provides that "[a] motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedes bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance." FED. R. BANKR. P. 8005.

heard,[3] and (3) they were not notified in time for their counsel to respond to the Emergency Motion, as is required pursuant to Bankruptcy Rule 8011(d).[4] Moreover, although the creditors subsequently attempted to obtain a copy of Florida West's original motion to obtain a stay, they discovered that neither the courts involved in this action[5] nor Wright, "for some reason unbeknownst to him," possesses a copy of this motion.[6]

The district court, acting sua sponte, called a status conference to consider the creditors' motion to vacate the stay of transfer. The district court, finding procedural defects in Florida West's Emergency Motion and that it had been "led down a primrose path" by Florida West's allegations of irreparable harm and the need for emergency relief, vacated its order granting the

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[3] Although the creditors acknowledge that the Emergency Motion was telecopied to their local Florida counsel, they state that their "local Louisiana counsel, the only counsel who could possibly appear at a hearing on the Emergency Motion to object to the relief sought therein, was not even afforded a courtesy copy of the Emergency Motion."

[4] This rule is quoted in the text infra at Part II.A.

[5] According to the Clerk of the United States Bankruptcy Court for the Western District of Louisiana, any papers received by his office after June 22, 1992 regarding the case before us were stamped "received" and immediately forwarded to the Southern District.

[6] As stated by the creditors in their motion for Rule 11 sanctions, "[c]ounsel to First Union has repeatedly requested a copy of the Original Stay Motion, but counsel to the Debtor has, to date, failed to provide such a copy, notwithstanding numerous representations that he would do so."

stay of transfer. The court also ordered the creditors to move for Rule 11[7] sanctions against Wright.

The creditors, in compliance with the district court's order, filed a motion for Rule 11 sanctions in the amount of $9,645.84. The district court granted that motion, but it imposed a sanction only in the amount of $2,641.84. Wright appeals from the district court's order imposing sanctions against him.

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[7] Rule 11 provides, in pertinent part, that:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. . . . The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a representative party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

FED. R. CIV. P. 11.

II.

Because "[t]he trial judge is in the best position to review the factual circumstances and render an informed judgment" as to the applicability of sanctions imposed under Rule 11 of the Federal Rules of Civil Procedure, we review the district court's imposition of such sanctions only for abuse of discretion. Thomas v. Capital Sec. Services, Inc., 836 F.2d 866, 872-73 (5th Cir. 1988) (rejecting a three-tier standard of review for applications of Rule 11). As stated by the Supreme Court, "[a] district court would necessarily abuse its discretion [in applying Rule 11] if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405, 110 S. Ct. 2447, 2461 (1990); see also Smith v. Our Lady of the Lake Hosp., Inc., 960 F.2d 439, 444 (5th Cir. 1992). Wright alleges that the district court abused its discretion by (a) determining that signing the Emergency Motion subjected him to Rule 11 sanctions, and (b) imposing sanctions in the amount of $2,641.84 based upon the evidence before it.

A.

As this court recognized in Thomas, when an attorney signs a pleading pursuant to Rule 11, he or she certifies:

> (1) that the attorney has conducted a reasonable inquiry into the facts which support the document;
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> (2) that the attorney has conducted a reasonable inquiry into the law such that the document embodies existing legal principles or a good faith argument "for the extension, modification, or reversal of existing law;" and

> (3) that the motion is not interposed for purposes of delay, harassment, or increasing costs of litigation.

836 F.2d at 874. The standard for applying Rule 11 is that of objective reasonableness. Id. at 873. Specifically, courts must consider whether a reasonable inquiry has been made and, in making such a determination, courts should consider the time available to the signer for investigation; the feasibility of a pre-filing investigation; the complexity of the factual and legal issues; and the extent to which development of the factual circumstances underlying the claim requires discovery. Id. at 875. Subjective good faith offers no protection from Rule 11 sanctions, and where an attorney fails to conduct a reasonable factual and legal inquiry before filing any paper with the court, sanctions are mandatory. Id. at 873, 876 (relying upon the "shall impose" language of Rule 11).

At the status conference called in response to the creditors' motion to vacate the stay of transfer, Wright acknowledged that Florida West's business is operated in Florida and that none of Florida West's assets is located in Louisiana. We have held that, "[o]nce a trial judge decides that a transfer is justified, . . . his ruling can only be overturned for a clear abuse of discretion." Howell v. Tanner, 650 F.2d 610, 616 (1981), cert. denied, 456 U.S. 918, 102 S. Ct. 1775 (1982). The district court's decision to transfer venue to the place where Florida West operates its business and its assets are located clearly does not constitute an abuse of discretion.

Despite the controlling law regarding venue and the facts in this case, Wright sought to obtain a stay of transfer of venue pending appeal. To obtain such a stay, a movant must show (1) a likelihood of success on the merits and (2) that it would sustain irreparable injury if the stay were not granted. First South Savings Association, 820 F.2d 700, 709 (5th Cir. 1987). Courts considering a motion for such a stay must also consider whether the granting of the stay would (3) substantially harm the other parties, and (4) serve the public interest. Id. Moreover, because Wright moved for a stay pending appeal pursuant to Rule 8011(d) (entitled "Emergency Motions"), Wright was obligated to make sure that his Emergency Motion met the requirements of Rule 8011(d). Rule 8011(d) provides that such motions:

> [1] shall be accompanied by an affidavit setting forth the nature of the emergency. The motion [2] shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion [3] shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant [4] shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying the motion [5] shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.

FED. R. BANKR. P. 8011(d).

We begin by acknowledging at the outset that Wright failed to meet the requirements of Rule 8011(d) when filing the motion at issue. First, Wright has been unable to substantiate that a motion to stay the transfer order advancing the grounds presented

in the Emergency Motion was ever filed with the bankruptcy court. It appears that all copies of this alleged motion--including Wright's--have simply vanished. Second, the record establishes that the creditors' Louisiana attorneys were not properly notified of Wright's Emergency Motion and the hearing on that motion.

Nevertheless, Wright's failure to comply with Rule 8011(d) is not the basis for imposing Rule 11 sanctions relied upon by the district court. Rather, the district court imposed Rule 11 sanctions against Wright after questioning him at the status conference it called in response to the creditors' motion to vacate the stay of transfer. According to the district court, upon being questioned, "Wright was unable to advise the court regarding the nature and extent of any harm that the debtor might suffer as a result of having these matters heard and ruled upon in the Southern District where the debtor operates its business." Wright's only showing of any specific injury was (1) an assertion that the change in venue would result in "prohibitive costs" and (2) an assertion that, should the change in venue result in an injury, such an injury might prove irreparable because the venue issue might be considered moot. Accordingly, the district court concluded that:

> The United States Supreme Court has ruled definitively that irreparable injury must be something more than monetary injury. See Sampson v. Murray, 415 U.S. 61, 90 (1974).[8] Notwithstanding this clear precedent,

[8] In Sampson, the Court stated that,

> Wright argued in the Emergency Motion that the debtor would suffer irreparable injury in the form of "prohibitive costs." . . . Even in his Opposition to the Motion for Rule 11 Sanctions Wright is unable to identify the specific injury that he will suffer by proceeding in the Southern District. He points to no injury that will arise because of this action's venue in the Southern District. He merely states that were he to suffer an injury by proceeding in the Southern District it might be irreparable in that an appeal of this action's venue might not be entertained because of mootness. Wright ignores his right to appeal the decisions themselves of the Southern District to its superior federal courts.

Even a legal position that is superficially plausible is sanctionable where it has no actual basis in the law and ignores controlling authority. See Golden Eagle Distributing Corp. v. Borroughs, 801 F.2d 1531, 1537 (5th Cir. 1986). Although Wright has put forth substantial authority on the interplay of mootness and a debtor's right to appeal in the brief he has submitted to this court, we conclude that the district court did not abuse its discretion by determining that Wright's theory of irreparable injury--that the potential for mootness to block a debtor's ability to remedy a potential injury arising from a change in venue constitutes irreparable injury justifying an emergency stay of transfer pending appeal--is not the product of a reasonable inquiry into existing law. See Thomas, 836 F.2d at 873.

> [m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Id. at 90 (internal quotation omitted).

In light of the fact that Wright failed to comply with the requirements of Rule 8011(d) and failed to show irreparable harm to Florida West resulting from the transfer of venue to the Southern District, we find that the district court did not abuse its discretion by imposing a Rule 11 sanction against him.

B.

Wright also challenges the amount of the sanction the district court imposed against him. According to Wright, the district court committed reversible error by failing to: (1) enter specific findings of fact to support its determination; (2) discuss its consideration of alternative sanctions; and (3) explain why the sanction imposed constitutes the least severe sanction adequate to serve the purposes of Rule 11. In the words of Wright, "it certainly appears that the district court has failed to follow the en banc mandate of Thomas . . . and its prodigy (sic) and has failed to show why the sanction imposed was the least severe adequate to serve the purposes of Rule 11."

In Thomas, we concluded that "a district court must impose sanctions once a violation of Rule 11 is found, but the district court retains broad discretion in determining the `appropriate' sanction under the rule." 836 F.2d at 878. We also adopted a rule that, although district courts are not required to make specific findings and conclusions in all Rule 11 cases, they must provide "an adequate record for appellate review in those cases in which the violation is not apparent on the record and the basis and justification for the trial judge's Rule 11 decision is

not readily discernible." Id. at 883. We concluded that "justification for the Rule 11 decision in the record must correspond to the amount, type, and effect of the sanction applied." Id.

Applying our Thomas holdings to the case before us, we find that the amount of the sanction imposed by the district court is clearly discernible from, and amply supported by, the record. Specifically, as is expressly permitted by Rule 11,[9] the court limited its imposition of sanctions to an assessment of the reasonable fees and expenses incurred by the creditors to prepare and file their motion to vacate the stay obtained by Wright through its Emergency Motion. In reaching its determination as to the appropriate amount of sanctions to impose, the court explained that:

> [a] review of the summary of the fees and expenses reflects that four separate attorneys worked a total of 69.95 hours to prepare and file the Motion to Vacate Stay and the accompanying memorandum. This is an unreasonable number of hours to prepare and file the Motion to Vacate Stay in this case. This court finds that approximately one-quarter of these hours are reasonable. A reasonable fee to prepare the Motion to Vacate Stay in this case is $2,250.00. This court further finds that $291.84 in expenses [is] reasonable.

[9] Rule 11 provides that a district court may impose "the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fees." FED. R. CIV. P. 11.

Accordingly, although the creditors moved for $9,645,84 in fees and expenses for its motion to vacate the emergency stay, the court awarded only $2,641.84.[10]

We conclude that the district court's assessment of reasonable attorney's fees at $2,250.00 and reasonable expenses at $291.84 is neither arbitrary nor unreasonable, and that, in reaching this assessment, the district court did not abuse its broad discretion to determine an appropriate sanction under Rule 11. Thomas, 836 at 878. However, the district court appears to have made a mathematical error when tallying these amounts, for they total $2,541.84 rather than the $2,641.84 imposed. Accordingly, we remand to correct this error.

III.

We AFFIRM the district court's imposition of a sanction against Wright pursuant to Rule 11 of the Federal Rules of Civil Procedure, but REMAND with instructions to correct what appears to be a mathematical error in the amount of $100. We also order Wright to bear the costs of this appeal.

[10] We note that the case before us is clearly distinguishable from Akin v. Q-L Investments, Inc., 959 F.2d 521, 535 (5th Cir. 1992), where the district court imposed a sanction of substantial size--$31,017.50--without entering specific factual findings.